

DD/A REGISTRY

FILE: Legal

8 JUN 1981

MEMORANDUM FOR: General Counsel

STAT ATTENTION:

FROM:

Deputy Director for Administration

SUBJECT: Request for Legal Assistance

1. The Office of Data Processing (ODP) has installed and is actively using a software security system called ACF2 on the IBM computers used for general data processing support. This product was developed by Schrager, Klemens, and Krueger, Inc. (SKK) of Chicago, Illinois, and marketed by the Cambridge Systems Group, Inc. (CSG) of Los Altos Hills, California.

2. The process of acquiring ACF2 for use by the Agency began STAT in 1978 with an effort led by [redacted] of the Batch Systems Branch, Systems Programming Division, Office of Data Processing. This effort involved a market survey of available security software and culminated in a successful sole source justification for acquisition of the ACF2 product. [redacted] has done all the additional software development necessary to tailor the product to meet the Agency's requirements.

3. On Thursday, 11 June 1981, [redacted] received a phone call from Mr. Dean Dickie of the law firm of Sachnoff Schraeger Jones Weaver and Rubenstein, LTD. Mr. Dickie informed [redacted] that SKK was involved in litigation with CSG, SKK having terminated the marketing agreement because CSG was not an effective agent and was hurting the sales of the product. Because of [redacted] involvement with the product, Mr. Dickie suggested that a deposition or court testimony by [redacted] could support his client's case. Upon termination of the conversation with Mr. Dickie, [redacted] called [redacted] in the Office of General Counsel to report the contact.

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STAT 4. [redacted] involvement in this case is a direct result of his official responsibilities as an ODP officer. Any testimony he may give about ACF2 and the relationship between SKK and CSG must also involve ODP and CIA. I request, therefore, that OGC provide [redacted] with advice and counsel on how to proceed, and that an attorney from OGC accompany him when his deposition is taken. Mr. [redacted]

STAT

cc: D/OS
D/OL
DD/P/ODP
STAT [redacted] SPD/P/ODP

ORIGINATOR:

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[redacted]
D_____ng

17 JUN 1981

Date

Distribution:

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2 - DDA *Chrono* *Subject*

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Approved For Release 2004/05/05 : CIA-RDP84B00890R000300030017-6

Approved For Release 2004/05/05 : CIA-RDP84B00890R000300030017-6

Office of Legislative Counsel

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12 June 1981

DD/A Registry
81-10254

NOTE FOR: Deputy Director for
Administration

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FROM:

Chief, Legislation Division

I understand that "Waste, Fraud,
and Abuse" is currently a matter of
concern to you. You may find the
attached memorandum of interest.



STAT

12 June 1981

Approved For Release 2004/05/05 : CIA-RDP84B00890R000300030017-6

DD/A REGISTRY
FILE: Legal

MEMORANDUM FOR: See Distribution

STAT FROM:
Assistant Legislative Counsel

SUBJECT: S. 1120

1. Attached for your information, review and comment is Subject Bill, the "Waste, Fraud, and Abuse Reduction Act of 1981" recently introduced by Senator Robert Kasten, Jr. (R. WI) with the cosponsorship of eleven other Members of the Senate. Also attached are Congressional Record excerpts of Senate floor statements made by Senator Kasten on the Bill including his introductory statement explaining in detail the Bill's provisions.

2. Briefly, the Bill would establish the following "process" to combat waste, fraud, and abuse in the Federal Government:

- the Secretary of the Treasury would withhold from obligation 2% of the appropriated funds of each and every agency until certain steps are taken by the Executive Branch agencies and the Congress (Section 3);
- by a date certain, every Federal agency must submit a plan "detailing how the agency intends to reduce any waste, fraud, and abuse which may occur in the administration of programs by the agency" (Section 4);
- in addition to the "plan", each agency no later than 1 February of each fiscal year must submit a "report" to Congress on its progress, indicating whether it will achieve the dictated 2% saving (Section 5);
- under Section 6 of the Bill, in order for an agency to have the withheld funds released, the agency--assuming it has fulfilled the other requirements of the Bill--the agency must "submit a request to the Congress for the release of the amount withheld from obligation or expenditure . . ."
- the Section 6 "request" then will trigger what Senator Kasten calls on page S4433 of the 6 May Congressional Record excerpt

"full reviews by the Governmental Affairs Committee in the Senate and Government Operations Committee in the House of Representatives." (emphasis added);

- Based on their investigation, these Committees will then "recommend what portion--if any--of the 2[%] money should be released" (page S4433, Congressional Record, 6 May 1981; see also Section 6 of the Bill);
- Finally, the Appropriations Committee under Subsection 6(d) of the Bill may authorize by joint resolution (to be approved by the full Congress) what funds are to be released.

You will also note that, under the terms of Section 2, the Bill would have limited application to fiscal years 1982 and 1983. Senator Kasten addresses this "sunset" aspect in the 6 May Congressional Record excerpt (page S4433).

3. The Administration, according to our OMB staff contacts, has yet to take a position on this legislation. With that in mind, I would ask for your formal written comments by noon Friday, 19 June, in order to allow this office to develop an official Agency view which we will transmit to OMB.



Assistant Legislative Counsel

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Attachments

Distribution



1 - OLC Subject (file: Waste, Fraud, and Abuse Reduction Act of 1981)

1 - OLC Chrono

OLC:RJW:am (11 June 1981)

STAT

97TH CONGRESS
1ST SESSION

S. 1120

To reduce the amount of funds available to an agency unless the agency has reduced waste, fraud, and abuse to the maximum extent feasible or demonstrates that no waste, fraud, or abuse exists in the administration of programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 6 (legislative day, APRIL 27), 1981

Mr. KASTEN (for himself, Mr. DOMENICI, Mr. ARMSTRONG, Mr. HATCH, Mr. DECONCINI, Mr. THURMOND, Mr. ANDREWS, Mr. SYMMS, Mr. QUAYLE, Mr. GRASSLEY, Mr. SASSER, and Mr. DENTON) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To reduce the amount of funds available to an agency unless the agency has reduced waste, fraud, and abuse to the maximum extent feasible or demonstrates that no waste, fraud, or abuse exists in the administration of programs, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
- 2 *That this Act may be cited as the "Waste, Fraud, and Abuse*
- 3 *Reduction Act of 1981".*

1 APPLICABILITY; DEFINITION

2 SEC. 2. (a) This Act applies to fiscal years 1982 and
3 1983.

4 (b) For purposes of this Act, the term "agency" has the
5 same meaning as in section 552(e) of title 5, United States
6 Code.

7 APPROPRIATIONS NOT AVAILABLE

8 SEC. 3. Of any amounts appropriated for an agency for
9 a fiscal year to which this Act applies, an amount equal to 2
10 per centum of such amount shall not be available for obliga-
11 tion or expenditure unless—

12 (1) the agency transmits to the Congress the plan
13 required for such fiscal year under section 4;

14 (2) the agency transmits the report required under
15 section 5 to the Congress on the implementation of the
16 plan required under section 4 and requests the Con-
17 gress to make available for obligation or expenditure
18 all or part of the amounts withheld under this section;
19 and

20 (3) a joint resolution is enacted, in accordance
21 with section 6, directing the Secretary of the Treasury
22 to make all or part of the amount withheld available to
23 the agency for obligation or expenditure.

1 PLAN FOR THE REDUCTION OF WASTE, FRAUD, AND

2 ABUSE

3 SEC. 4. (a) Not later than June 1, 1981, and not later
4 than one year thereafter, each agency shall prepare and
5 transmit to the Congress a plan, for the fiscal year beginning
6 on October 1 of the year in which the report is submitted,
7 detailing how the agency intends to reduce any waste, fraud,
8 and abuse which may occur in the administration of programs
9 by the agency.

10 (b) Any plan required by this section may not provide
11 for the reduction of services provided pursuant to the pro-
12 grams administered by the agency.

13 REPORT ON EFFORTS TO REDUCE WASTE, FRAUD, AND

14 ABUSE

15 SEC. 5. Not later than February 1 of each fiscal year to
16 which this Act applies, each agency shall prepare and trans-
17 mit to the Congress a report on the efforts of the agency
18 during such fiscal year to reduce waste, fraud, and abuse in
19 the administration of programs, including the efforts of the
20 agency to implement the plan required by section 4. The
21 report required by this section shall include—

22 (1) in the case of an agency which has made re-
23 ductions in such waste, fraud, and abuse—

24 (A) a description of the nature of such reduc-
25 tions;

(C) if applicable, an explanation why the agency was unable to make reductions in waste, fraud, and abuse in the administration of agency programs which would result in savings of an amount equal to or in excess of the amount withheld under section 3:

12 (2) in the case of an agency which has been
13 unable to make any reduction in such waste, fraud, and
14 abuse, a statement of the reasons for such inability;

15 and
16 (3) in the case of an agency which has determined
17 that there is no such waste, fraud, or abuse, a state-
18 ment specifying such determination and the basis on
19 which such determination was made

20. RELEASE OF FUNDS

21 SEC. 6. (a) Any agency which, during a fiscal year to
22 which this Act applies (1)(A) made reductions in waste,
23 fraud, and abuse in the administration of programs which re-
24 sulted in savings in an amount less than the amount withheld
25 under section 3 or (B) determined that no such waste, fraud,

1 or abuse exists, and (2) submitted the plan required by sec-
2 tion 4 and the report required by section 5, may, in accord-
3 ance with this section, submit a request to the Congress for
4 the release of the amount withheld from obligation or ex-
5 penditure under section 3.

6 (b) Any request by an agency under this section for the
7 release of amounts withheld under section 3 may—

8 (1) in the case of an agency which has made re-
9 ductions in waste, fraud, and abuse in the administra-
10 tion of agency programs, be for an amount which
11 equals the difference between the amount withheld
12 under section 3 and the amount saved by the agency
13 as a result of such reduction; and

14 (2) in the case of an agency which has made the
15 determination described in section 5(a)(3), be for an
16 amount equal to the amount withheld under section 3.

17 (c) By April 1 of each fiscal year, the Committee on
18 Governmental Affairs of the Senate and the Committee on
19 Government Operations of the House of Representatives
20 shall conduct an investigation of the efforts of each agency
21 which submits a request under this section to reduce waste,
22 fraud, and abuse in the administration of programs, and shall
23 transmit to the Committee on Appropriations of its respective
24 House its recommendations concerning whether all or part of
25 the amount withheld under section 3 should be made availa-

1 ble for obligation or expenditure by the agency. In con-
2 ducting the investigation required by this subsection, the
3 Committee on Governmental Affairs of the Senate and the
4 Committee on Government Operations of the House of
5 Representatives shall—

6 (1) solicit and consider comments from the com-
7 mittees of the Senate or the House of Representatives
8 having legislative jurisdiction over programs adminis-
9 tered by the agency concerning the efforts of the
10 agency to reduce waste, fraud, and abuse in the admin-
11 istration of such programs; and

12 (2) consider any report by the Comptroller Gener-
13 al of the United States or the Inspector General or
14 other comparable official of the agency with respect to
15 the efforts of the agency to reduce waste, fraud, and
16 abuse in the administration of programs.

17 (d) The Committees on Appropriations of the Senate
18 and the House of Representatives may report to their respec-
19 tive Houses a joint resolution directing the Secretary of the
20 Treasury to make all or part of the funds withheld under
21 section 3 available for obligation or expenditure by the
22 agency.

23 (e) The provisions of subsections (a) and (c) are enacted
24 by the Congress—

○

INTRODUCTORY STATEMENT

5.1120

S 4432

Approved For Release 2004/05/05 : CIA-RDP84B00890R000300030017-6 May 6, 1981

tack before it arrives on target. Rather than deploying MX in a mobile-based mode and then tacking a low-altitude defense system on as the real survivability determinant, it would seem to make sense to move directly to deployment of a full-scale layered ballistic missile defense.

The status of the 1972 ABM Treaty limiting the deployment of ballistic missile defense systems must be addressed as a final consideration here. With the evident failure of the SALT process to achieve the results expected in 1972, the ABM Treaty remains the only tangible evidence of arms control progress. The ABM Treaty is scheduled for regular 5-year review in 1982.

Now is the time, in preparation for the 1982 review, to assess whether its continuation is in the U.S. strategic interest.

No arms control agreement can be regarded as inherently permanent. The ABM Treaty was negotiated in a particular political and strategic environment for a particular purpose and in the expectation of further events. The ABM Treaty achieved one of its purposes, to prevent both sides from deploying ABM systems displaying inadequate technological performance.

Money was saved on both sides as a result. But ballistic missile defense technology has improved since 1972, on both sides, to the point where the United States can contemplate an effective defense of its land-based ballistic missiles.

Meanwhile, the strategic and global political environment has changed dramatically since 1972. The Soviet Union now holds clear or near superiority in several important measures of strategic offensive capability. The SALT decade has not yielded the results originally expected.

It would be a mistake to continue to allow arms control expectations to control strategic force planning. Such expectations tempered crucial U.S. decisions in the 1970's with results we now regret. Failure to pursue the ballistic missile defense option because of nostalgic affection for the ABM Treaty would be as incorrect as acceptance of the SALT II Treaty would be, simply because its limits on warheads were required to make the mobile-based MX practical.

The fact that mobile-basing MX is a system that implicitly depended upon SALT II to make it practical is borne out in the need for a low-altitude defense for the mobile-based system now that SALT II is unlikely to be realized.

I am not prepared to ignore the possibility that a U.S. ballistic missile defense capability might actually enhance arms control initiatives. The Soviets are unlikely to become serious about strategic arms control until they see the United States in a position to negate the significant strategic superiority they have been allowed to achieve.

The existence of the ABM Treaty has had little effect in furthering SALT goals. It may be that moving ahead with a U.S. ballistic missile defense and voiding the ABM Treaty would give a U.S. President some leverage in encouraging the

Soviets to control offensive strategic arms.

I intend to support the application of increased resources to develop a two-tiered ballistic missile defense capability as an alternative to mobile-basing the MX missile. A concerted program of R. & D. should enable the United States to demonstrate the technology and meet critical engineering milestones in order to meet an initial operating capability of 1990.

By pursuing this strategic force option the United States can move to insure the continued credibility of the U.S. strategic deterrence Triad without forcing an unpopular and slightly incredible weapon system on an unwilling citizenry.

RECOGNITION OF SENATOR KASTEN

THE PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin (Mr. KASTEN) is recognized not to exceed 13 1/2 minutes.

THE WASTE, FRAUD, AND ABUSE REDUCTION ACT OF 1981

Mr. KASTEN. Mr. President, I am pleased to join today with several of my colleagues in introducing "The Waste, Fraud, and Abuse Reduction Act of 1981."

Mr. President, I ask unanimous consent that at the conclusion of my remarks the text of the bill be printed in the Record.

THE PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KASTEN. Mr. President, the Waste, Fraud, and Abuse Reduction Act of 1981 would provide a legislative framework to look for waste, fraud, and abuse in Federal Government. It would set up a cooperative effort by the administration and the Congress toward solving what President Reagan has described as "an unrelenting national scandal." For too long, we have simply talked about doing something to eliminate mismanagement and inefficiencies in the Federal Government. The time has come for action. I sincerely believe this legislation offers an innovative, evenhanded approach to getting at the problem—and I believe it is an approach all Members of Congress can support.

In fact, when the Senate Budget Committee considered the first concurrent budget resolution last week, a majority indicated that it was time Congress did something about waste, fraud, and abuse in Government. The Budget Committee assumed that legislation similar to this bill would be enacted by the full Congress, and that the outlay savings would equal \$7.2 billion in 1983 and \$7.7 billion in 1984.

BUREAUCRATS THINK NO ONE CARES

Up until now, no one has taken congressional efforts to cut waste, fraud, and abuse seriously. The Washington Star published an article several weeks ago headlined: "No One Cares About Waste, Fraud and Abuse, Bureaucrats Say." Reporter Philip Shandler explained

that in a survey of senior executives protected by the Merit Systems Protection Board, 45 percent of the 8,500 respondents said they had seen or had evidence of wasteful or illegal activity in the past year. Yet 7 out of 10—a full 70 percent—said they had told no one what they knew about wrongdoing. Fifty percent said they did nothing because they believed nothing would be done if they reported the waste. Another 20 percent said they were silent because they believed nothing could be done.

I don't believe that the average employee is afraid of reprisals or is looking for a reward as much as he is convinced no one cares.

A Federal worker told a surveyor recently:

The bureaucrat was explaining why he had not reported what he regarded as waste in his agency.

If these facts are representative of the majority of top executives in the Federal agencies, it is indeed shameful. At a time when everyone in this body is concerned about balancing the budget, when many programs are being pared back to make changes in the Government's direction, and when the American people badly need tax relief, I am convinced the time has come to signal that somebody does care—that Congress cares.

Mr. President, President Reagan has made the elimination of waste, fraud, and abuse a primary concern of his administration. I am also aware that he has established a Council on Integrity and Efficiency to oversee this problem. The President is to be commended for his efforts and good intentions.

However, this problem of waste, fraud, and abuse is too big for one branch of Government to deal with by itself. Indeed, Congress, as guardian of the purse strings, needs to assist the administration; it needs to prod the administration; it needs to exercise leadership. That is exactly what my bill proposes.

HOW THE PROCESS WOULD WORK

The approach is simple. This legislation will direct the Secretary of the Treasury to withhold from obligation 2 percent of the appropriated funds of each and every agency until Congress has a chance to review each agency's efforts to eliminate waste, fraud, and abuse.

By virtue of this single step, Congress will be saying in a clear, concise way that we are concerned about the problem of waste, fraud, and abuse. It will put every agency on notice that certain steps are expected if the 2-percent money is to be released. It will tell every agency manager to get looking for waste, fraud, and abuse.

By this single provision of the bill, no longer will bureaucrats be able to claim that no one cares.

AGENCIES MUST ACT

The second step will be made by the agencies. The bill requires that by the start of the fiscal year every agency must submit to Congress its plans to look for waste, fraud, and abuse. Agency managers can expect that they will be called before Congress to explain the steps they

* - Why is leg needed then?

have taken. Because this report is required, every agency head will be required to formulate a plan. No longer will it be just talk; action will be required.

And what is healthy about this step is that it will be the Federal agencies that must take the initiative.

CONGRESS WILL REVIEW EFFORTS

By February 1 of each fiscal year, each agency must report to Congress on its progress, and whether it plans to achieve the 2-percent saving.

It should be noted that agencies must explain what alternatives were explored, where savings are expected, impacts on programs if any, and why one alternative was selected over another.

These reports will automatically trigger full reviews by the Government Affairs Committee in the Senate and the Government Operations Committee in the House of Representatives. This legislation requires that General Accounting Office and Inspectors General reports—all too often ignored—be considered in the review. More important, the bill requires that authorizing committees be asked to consult in the review process. In addition, it is the intention of the legislation that public comment, including media reports, be considered.

These reviews are intended to determine whether an agency is justified in having all or part of its 2-percent money released. The standard will be whether the administrators can show that the agency is free of waste, fraud, and abuse. The purpose is not to arbitrarily penalize any agency for efficient management. Rather, it is to determine if the agency is doing a good job in getting at the problem.

The legislation requires that the Government Affairs and Government Operations Committees then recommend what portion—if any—of the 2-percent money should be released.

APPROPRIATIONS COMMITTEES DECIDE

Finally, the Appropriations Committees will authorize by joint resolution, to be approved by the full Congress, what funds are to be released. It is intended that this action should occur before the July 1, or fourth quarter, disbursement by the Treasury.

The purpose of this step is to leave the final decision in the hands of the Appropriations Committees. This is important because the Appropriations Committees have traditionally had this power, and because the information developed will be essential to establishing appropriation levels for the next year. If waste, fraud, or abuse is eliminated either by the agencies themselves or through recommendations of the investigating committees, then those savings should be considered for the subsequent year's spending.

In drafting this legislation every effort has been made to take into consideration everyone's interests—from the agencies to the authorizing committees to the Appropriations Committees. We will consider all the reports done each year, and we will provide every opportunity for exchange of ideas before a final decision. And—most importantly—we provide a

basis for action. Each agency will be treated equally, with the only burden being to stop the spending of money illegally, foolishly, or wastefully.

This legislation provides the incentives, the initiative, and the determination to look for waste, fraud, and abuse; nothing more, nothing less. It does not reward agencies for eliminating waste, fraud or abuse. It assumes agencies should be doing that anyway. I believe the public wants no less of an effort.

We are not talking about a few dollars. There is significant evidence before us that waste, fraud and abuse does exist in very large amounts. It is also apparent that savings can be made from eliminating mismanagement and inefficiencies. Donald Lambro has suggested that as much as \$100 billion are being wasted every year. The Senate Budget Committee is assuming that, through passage of legislation similar to "the Waste, Fraud and Abuse Reduction Act," we could save \$15 billion in 1983 and 1984. I believe these estimates were conservative. One can hardly pick up a major newspaper today without seeing official estimates in excess of these amounts.

I also believe that we should work to get this legislation passed in 1981. We should move forward while the issue has a high profile and while we have a new administration which has indicated a strong interest in doing something about the problems it inherited. If we can cut waste this year, keep it out, and then go back for more next year, those savings will compound arithmetically.

Indeed, this legislation offers one of our best hopes for balancing the budget by 1984. Nothing is more offensive than spending money wastefully when the economy cries out for frugality. The challenge is to get started now and make the plan effective in 1982.

One final note is necessary. I have provided that the legislation be "sunset" after 2 years on the theory that if it proves effective it can be reenacted. And if it proves ineffective, we will have to seek a better way. I believe the former will occur.

Mr. President, a number of my colleagues have told me this is an innovative approach which ought to be given a chance. I believe Members from both sides of the aisle can, and ought to, support this approach.

In the end, this legislation simply calls on Congress to get on with the job—to look. A Senator could oppose this legislation on the basis that it impinges on somebody's authority, that the Appropriations Committees should do the cutting, or that the administration should make the decisions. But I believe there is plenty of room for everyone to get involved. And I believe, Mr. President, that all arguments pale when confronted by the political reality that there are major savings to be achieved and that the taxpayers expect us to act.

(EXHIBIT 1)

S. 1120

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Waste, Fraud, and Abuse Reduction Act of 1981".

APPROPRIATIONS NOT AVAILABLE
SEC. 2. (a) This Act applies to fiscal years 1982 and 1983.

(b) For purposes of this Act, the term "agency" has the same meaning as in section 552(e) of title 5, United States Code.

APPROPRIATIONS NOT AVAILABLE

SEC. 3. Of any amounts appropriated for an agency for a fiscal year to which this Act applies, an amount equal to 2 percent of such amount shall not be available for obligation or expenditure unless—

(1) the agency transmits to the Congress the plan required for such fiscal year under section 4;

(2) the agency transmits the report required under section 5 to the Congress on the implementation of the of the plan required under section 4 and requests the Congress to make available for obligation or expenditure all or part of the amounts withheld under this section; and

(3) a joint resolution is enacted, in accordance with section 6, directing the Secretary of the Treasury to make all or part of the amount withheld available to the agency for obligation or expenditure.

PLAN FOR THE REDUCTION OF WASTE, FRAUD, AND ABUSE

SEC. 4. (a) Not later than June 1, 1981, and not later than one year thereafter, each agency shall prepare and transmit to the Congress a plan, for the fiscal year beginning on October 1 of the year in which the report is submitted, detailing how the agency intends to reduce any waste, fraud, and abuse which may occur in the administration of programs by the agency.

(b) Any plan required by this section may not provide for the reduction of services provided pursuant to the programs administered by the agency.

REPORT ON EFFORTS TO REDUCE WASTE, FRAUD, AND ABUSE

SEC. 5. Not later than February 1 of each fiscal year to which this Act applies, each agency shall prepare and transmit to the Congress a report on the efforts of the agency during such fiscal year to reduce waste, fraud, and abuse in the administration of programs, including the efforts of the agency to implement the plan required by section 4. The report required by this section shall include—

(1) in the case of an agency which has made reductions in such waste, fraud, and abuse—

(A) a description of the nature of such reductions;

(B) a specification of the amount saved by the agency as a result of such reductions and of the percentage such amount constitutes of the amounts appropriated for such agency for such fiscal year; and

(C) if applicable, an explanation why the agency was unable to make reductions in waste, fraud, and abuse in the administration of agency programs which would result in savings of an amount equal to or in excess of the amount withheld under section 3;

(2) in the case of an agency which has been unable to make any reduction in such waste, fraud, and abuse, a statement of the reasons for such inability; and

(3) in the case of an agency which has determined that there is no such waste, fraud, or abuse, a statement specifying such determination and the basis on which such determination was made.

RELEASE OF FUNDS

SEC. 6. (a) Any agency which, during a fiscal year to which this Act applies (1) (A) made reductions in waste, fraud, and abuse in the administration of programs which resulted in savings in an amount less than the amount withheld under section 3 or (B) determined that no such waste, fraud, or abuse

Approved For Release 2004/05/05 : CIA-RDP84B00890R000300030017-6

CREDIT CARD SURCHARGE

H.R. 3152

exists, and (2) submitted the plan required by section 4 and the report required by section 5, may, in accordance with this section, submit a request to the Congress for the release of the amount withheld from obligation or expenditure under section 3.

(b) Any request by an agency under this section for the release of amounts withheld under section 3 may—

(1) in the case of an agency which has made reductions in waste, fraud, and abuse in the administration of agency programs, be for an amount which equals the difference between the amount withheld under section 3 and the amount saved by the agency as a result of such reduction; and

(2) in the case of an agency which has made the determination described in section 5(a)(3), be for an amount equal to the amount withheld under section 3.

(c) By April 1 of each fiscal year, the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives shall conduct an investigation of the efforts of each agency which submits a request under this section to reduce waste, fraud, and abuse in the administration of programs and shall transmit to the Committee on Appropriations of its respective House its recommendations concerning whether all or part of the amount withheld under section 3 should be made available for obligation or expenditure by the agency. In conducting the investigation required by this subsection, the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives shall—

(1) solicit and consider comments from the committees of the Senate or the House of Representatives having legislative jurisdiction over programs administered by the agency concerning the efforts of the agency to reduce waste, fraud, and abuse in the administration of such programs; and

(2) consider any report by the Comptroller General of the United States or the Inspector General or other comparable official of the agency with respect to the efforts of the agency to reduce waste, fraud, and abuse in the administration of programs.

(d) The Committees on Appropriations of the Senate and the House of Representatives may report to their respective Houses a joint resolution directing the Secretary of the Treasury to make all or part of the funds withheld under section 2 available for obligation or expenditure by the agency.

(e) The provisions of subsections (a) and (c) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

Mr. President, I yield back the remainder of my time.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. KASTEN). Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes with Senators permitted to speak therein up to 10 minutes each.

but I guess it cannot do that. So let me just say why I think we should give it further detailed consideration when it comes up. There is a serious question as to whether continued regulation is in the public interest or whether deregulation and the free market should govern surcharges. President Reagan has wisely called for deregulation of the economy. The Vice President heads a task force on deregulation. The Banking Committee should hear from the administration on the issue. We did not.

This bill continues a wholly unnecessary regulation, interfering with the right of independent businessmen to operate their businesses any way they wish. And I think the interference is wholly unjustified.

And why do they do that? Why should independent businessmen not be allowed to give cash customers a break? That is what this bill would prevent. Why should this Republican Senate persist in this regulation, opposed by consumer groups—in the name of consumers, to restrain business from imposing a surcharge on credit cards?

In imposing that surcharge, what they do is they give a break to cash customers. And it seems to me that that break should be allowed.

After all, inflation is our number one economic problem. To allow surcharges would be deflationary, because people would be less inclined to charge it, less inclined to use their credit cards, more inclined to pay cash and more inclined not to buy.

The ban on surcharges, by artificially lowering the true cost of credit, encourages current subsidized consumption. The Banking Committee, as I said, held a 1-day hearing on the surcharge issue. It did not hear from witnesses on how deregulation of surcharges would fit in with the President's program, nor from economists. I think it is fair to say the Banking Committee did not develop a full record on the surcharge issue.

Of those who did appear, the consumer groups took a very strong position in favor of allowing the surcharge, because they felt that the cash purchases should be encouraged.

True, we did hear from the credit card companies. What do you think they testified to? Well, American Express, to nobody's surprise, said they did not want the surcharge to be imposed on credit card purchases. Of course they do not want it. After all, they live by that. They received a billion dollars last year. They will get a billion and a half dollars this year in payments from merchants who will permit the use of credit cards. And that billion dollars and billion and a half dollars will be charged, of course, to the cash customers and all customers who buy goods from these merchants.

Mr. President, the other side of the business community did not testify. I am speaking of the large discount houses like Montgomery Ward and Zayre's, which would oppose continued regulation. Furthermore, the Banking Committee did not hear from a number of con-

(with such exceptions and limitations, if any, as the Office may find to be necessary in the interest of national defense) be usefully available for practice by the general public.

TITLE IV—RIVER BASIN COMMISSIONS

"Sec. 401. (a) The President shall declare the establishment of a river basin commission responsible for water and related land resources within such basin, upon the request of the States within which all of a significant portion of the basin or basins concerned are located, if the request (1) defines the area, river basin, or group of related river basins for which a commission is requested, (2) is made in writing by the Governors or in such manner as provided by State law, and (3) is concurred in by not less than two-thirds of the States within which portions of the basin or basins concerned are located.

"(b) Each such commission shall—

"(1) work with the affected States to coordinate planning for the development of water and related land resources in the basin;

"(2) prepare and keep up to date, to the extent practicable, a comprehensive, coordinated, joint plan for Federal, State, Interstate, local and nongovernmental development of water and related sources in the basin;

"(3) rank priorities for the collection and analysis of basic data and for investigation, planning, and construction of projects; and

"(4) foster and undertake such studies of water and related land resources problems in its area, river basin, or group of river basins as are necessary in the preparation of the plan described in paragraph (2) of this subsection.

MEMBERSHIP

"Sec. 402. Each river basin commission established pursuant to this Title shall be composed of one member appointed by the Board, together with one member from each State which lies wholly or partially within the basin or portion of the basin for which the commission was established, and the appointment of each such member shall be made in accordance with the laws of the State which he represents. In the absence of governing provisions of State law, such State members shall be appointed and serve at the pleasure of the Governor. The chairman of each commission shall be selected by the commission.

"Sec. 403. (a) In the work of the commission, every reasonable endeavor shall be made to arrive at a consensus of all members on all issues; but failing this, full opportunity shall be afforded each member for the presentation and reporting of individual or opposing views.

"(b) Vacancies in a commission shall not affect its powers but shall be filled in the same manner in which the original appointments were made.

"(c) A commission shall terminate upon decision of a majority of the State composing the commission. Upon such termination, all property, assets, and records of the commission shall thereafter be turned over to such agencies of the United States and the participating States as shall be appropriate in the circumstances: *Provided*, That studies, data, and other materials useful in water and related land resources planning to any of the participants shall be kept freely available to all such participants.

"Sec. 404. Each river basin commission shall—

"(1) submit a report on its work at least annually, to the Congress, the Governor of each participating State, and the heads of such Federal, State, Interstate, and international agencies as the President or the Governors of the participating States may direct;

"(2) submit to the Governors and the legislatures of the participating States a comprehensive, coordinated, joint plan, or any major portion thereof or necessary revisions thereof, for water and related land resources development in the area, river basin, or portion of a basin for which such commission was established. Before the commission submits such a plan or major portion thereof or revision thereof to the Council, it shall transmit the proposed plan or revision to the head of each affected Federal department or agency, the Governor of each State, and each Interstate agency, and to the head of the United States section of any international commission if the plan, portion, or revision deals with a boundary water or a river crossing a boundary, or any tributary flowing into such boundary water or river, over which the international commission has jurisdiction or for which it has responsibility. Each such department and agency head, Governor, Interstate agency, and United States section of an international commission shall be transmitted with the plan, or revision.

"Sec. 405. (a) For the purpose of carrying out the provisions of this title, each river basin commission may—

"(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable.

"(2) acquire, furnish, and equip such office space as is necessary.

"(b) The chairman of each river basin commission shall, with the concurrence of the vice-chairman, appoint the personnel employed by such commission, and the chairman shall, in accordance with the general policies of such commission with respect to the work to be accomplished by it and the timing thereof, be responsible for (1) the supervision of personnel employed by such commission, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditure of funds available to such commission.

"Sec. 406. (a) There is authorized to be appropriated to the Office for distribution to approved river basin commissions the sum of \$2,000,000 for the fiscal year ending September 30, 1982, and for each fiscal year thereafter.

"(b) The United States shall pay for no more than one-third of the expenses of any commission. The remainder of the commission's expenses shall be otherwise apportioned as the commission may determine."

OMAR BRADLEY

• Mr. DOLE. Mr. President, with the death of Omar Bradley, America will be missing one of her most cherished citizens. Indeed, it is because of a few people like General Bradley that this Government exists, and is allowed the strength and stability that can only come with time.

Omar Bradley lived 88 years. It may be noted that, in an era of shocking incidents and daily surprises, his death does not come unexpectedly. He lived an unusually successful and full life, and he died of natural causes. It was not his

fate to surprise us with happenstance, but rather to impress us with a simple excellence stemming from diligence, honesty and hard work.

He was not a Patton, and not a Montgomery. Omar Bradley was one of those rare people who seemed destined to be at the right place at the right time. Unaffected, stable, competent and self-assured—this was a man who could balance who he was with what he had to do. And all he had to do was help to save this world in its greatest hour of need.

Like his good friend and commander Dwight D. Eisenhower, Omar Bradley was a Midwesterner with a supremely patriotic heart. He once said that the Armed Forces are not there to make wars, but rather to get us out of them. This was the kind of straight-forward thinking that made him a great general, and an important leader.

In the history of this Nation, Omar Bradley will be remembered in that way: as one of our greatest military men. But he was more than that. He was a good man, and that is the most that any of us can ever hope to be.

ELIMINATING WASTE, FRAUD, AND ABUSE: AN INNOVATIVE APPROACH TO SAVE BILLIONS

• Mr. KASTEN. Mr. President, at a time when both the administration and the Congress are attempting to slow Federal spending and bring the budget under control, it is intolerable and unacceptable not to do everything possible to eliminate waste, fraud, and abuse from every Federal agency.

The American people have the perception that the entire Federal system is fraught with waste, fraud, and abuse, and they do not like it. We in Congress have all seen the mounting evidence that there indeed exists plenty of opportunity to tighten budgets. President Reagan in his speech before the Congress termed waste, fraud, and abuse "an unrelenting national scandal."

The President has proposed to focus on these problems and he is to be commended for his initiatives.

But, Mr. President, this is a problem which the administration ought not to solve alone. Congress has control over the purse strings, and we have oversight responsibilities. What we need is a cooperative plan to insist that Federal managers all across this Nation systematically begin an earnest search to eliminate the problems of waste, fraud, and abuse.

Mr. President, I intend to introduce a bill shortly after the recess to provide a formal procedure to attack waste, fraud, and abuse. Today, I would just like to take a few minutes to outline the basic elements of the bill. I would begin by pointing out that estimates of waste, fraud, and abuse have run as high as \$100 billion annually. Despite the efforts of inspectors-general and the comptroller generally only a fraction of the potential savings have been realized. Efforts by Congress to reduce expenditures have not been successful. Members from both parties are concerned about the problem.

My bill, Mr. President, would simply

April 9, 1981

Approved For Release 2004/05/05 : CIA-RDP84B00890R000300030017-6

force every department to focus on waste, fraud, and abuse. It offers potential savings in Federal spending of billions of dollars during fiscal years 1982 and 1983. If we in Congress do our job, these savings can become a reality and the money saved can be diverted to the badly needed tax cut or to other programs that are now being curtailed.

My bill—the Waste, Fraud, and Abuse Reduction Act of 1981—directs the Secretary of the Treasury to withhold 2 percent of every agency's budget pending compliance with a process designed to eliminate waste, fraud, and abuse. This step will serve notice on all Federal managers that Congress intends to become more diligent in its oversight responsibilities.

The second step requires every agency to submit a report to Congress by the beginning of the fiscal year—October 1, outlining precisely what that agency plans to do to effect the 2-percent savings through the elimination of waste, fraud, and abuse. This step will require each agency to focus on the problem. It will notify the agencies that they must justify their search to Congress if they hope to get any part of the 2-percent "withheld" money released.

The bill provides that by February 1—midway through the fiscal year—every agency must notify Congress if it intends to meet the 2-percent savings, how it will make those savings, and if such savings cannot be made, why not.

The next step—and perhaps the most critical in testing the will of Congress—is for the Government Affairs Committee in the Senate and the Government Operations Committee in the House of Representatives to conduct an investigation into each agency. These committees are directed to utilize information from the authorizing committees, Inspector General reports, GAO reports, and public comments. These committees will determine if the agency is doing the job intended by the Congress. By June 1, these committees will recommend whether or not any part of the withheld funds should be released.

The final step will be for the Appropriations Committees to present a resolution authorizing release of the part of the withheld funds believed to be justified as a result of the investigations. This step is politically important, because it leaves the final decision in the hands of the Appropriations Committees which are most familiar with the specific programs. It should be noted that the recommendations of Government Affairs and Government Operations Committees are to be considered in making these decisions.

Mr. President, if every agency were to

save its 2-percent quota, we could reduce the spending levels by from \$10 to \$12 billion in 1982. And in 1983 this amount could exceed \$20 billion, assuming the waste is there to be eliminated. Whatever the saving, there can be no question that money saved could be put to more productive use, including badly needed tax cuts to get the economy revitalized.

Another point should be made. This bill for the first time establishes a process to attack the problem of waste, fraud, and abuse. But it does not attack it with a broadax; it attacks it with a scalpel. No agency free of waste, fraud, and abuse need lose a single dime of appropriations. But it must justify that it is free of waste, fraud, and abuse.

The Waste, Fraud and Abuse Reduction Act of 1981 is a moderate, but determined and innovative approach to this critical and pressing problem.

I believe, Mr. President, this concept should receive bipartisan support. It is a strong signal to look for waste, fraud, and abuse. Congress, by adopting this concept, can contribute to an immediate solution. And it will assert the proper role of Congress. •

AMERICAN PEOPLE FAIL TO VOTE: LATEST EXAMPLE OF THIS FAILURE IS ELECTION OF MAYOR IN SAN ANTONIO

• Mr. RANDOLPH: Mr. President, Federal Election Commission figures show that 53.6 percent of our Nation's eligible voters cast ballots in the 1980 Presidential election. This was the smallest voter turnout in more than three decades.

This failure to vote is appalling when compared to that of other democratic nations.

In the most recent election in Great Britain, the percentage of eligible voters at the polls was 76 percent; in Denmark, 86 percent; 91 percent in West Germany; and 95 percent in Australia.

I cite these figures, Mr. President, to highlight again what I consider to be a serious malady afflicting our Republic.

Last weekend, an election for mayor was conducted in our ninth largest city, San Antonio, Tex. Press reports indicated that the 156,263 votes cast represented a record turnout of 43 percent of those registered.

Although San Antonio can be proud of the record voter turnout, it is sad—it is shocking—Mr. President, when 43 percent of the registered voters—not even of the eligible voters—establishes a high mark for voter participation in an election. •

A TRIBUTE TO HOBART TAYLOR, JR.

• Mr. RIEGLE: Mr. President, I rise to pay tribute to an outstanding former Michigander who served both his State and his country with distinction and honor, and who will be remembered by those who knew him as a tireless humanist.

Hobart Taylor, Jr., answered President John F. Kennedy's call to Washington to become special counsel to the President's Committee on Equal Employment Opportunity in 1961. Mr. Taylor's outstanding contribution and leadership in the post led to a number of other public service positions and in 1965 President Johnson appointed him to the Export-Import Bank as a director.

In 1968 he resigned and entered probate law practice. At the time of his death, he was a partner in the firm of Jones, Day, Reavis, and Pogue, and served on the boards of directors of several major U.S. corporations.

Before coming to Washington, Hobart Taylor, Jr., began his career in Michigan as a research clerk for the chief justice of the Michigan Supreme Court. He was also an assistant prosecuting attorney in Detroit and later became the corporation counsel for Wayne County. He completed his Detroit career as senior partner in a law firm he established. His concern for his community was ever a part of his busy schedule while in Michigan.

At the age of 60, the loss of Hobart Taylor, Jr., seems particularly difficult for us to accept because his contributions have been widely known and appreciated. I and my Michigan constituents wish to express our deepest sympathy to the members of his family and others who have been close companions and fellow workers at his side through the years. •

CONCLUSION OF MORNING BUSINESS

Mr. STEVENS. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. STEVENS. Mr. President, I move, in accordance with the previous order that the Senate stand in recess until 9:30 a.m. tomorrow.

The motion was agreed to; and at 10:01 a.m. the Senate recessed until tomorrow, April 10, 1981, at 9:30 a.m.